



March 14, 2001

VIA ELECTRONIC FILING

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, SW- TW - A235
Washington, DC 20554

Re: CC Docket No. 00-199, 2000 Biennial Regulatory Review –
Comprehensive Review of the Accounting Requirements and ARMIS
Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2
and Phase 3

Dear Ms. Salas:

Attached are the Associations for Local Telecommunications Services (ALTS)
Reply Comments in response to the Commission's Notice of Proposed Rulemaking
released October 18, 2000 in the above captioned proceeding.

Sincerely,

/s/

Kimberly M. Kirby
Assistant General Counsel
Association for Local
Telecommunications Services

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
2000 Biennial Regulatory Review --)	
Comprehensive Review of the)	
Accounting Requirements and)	CC Docket No. 00-199
ARMIS Reporting Requirements for)	
Incumbent Local Exchange Carriers:)	
Phase 2 and Phase 3)	

**REPLY COMMENTS OF THE ASSOCIATION FOR LOCAL
TELECOMMUNICATIONS SERVICES**

The Association For Local Telecommunications Services (“ALTS”) submits these reply comments in response to the FCC’s October 18, 2000 Notice of Proposed Rulemaking (“NPRM”), Phase 2 and Phase 3. In 1999, the Federal Communications Commission (“Commission”) initiated a comprehensive review of its accounting and reporting requirements for incumbent local exchange carriers (“ILECs”). In Phase 1, the Commission adopted Part 32 accounting rule changes and reporting reform for the Automated Reporting Management Information System (“ARMIS”).¹ Further review led the Commission to initiate a third phase for comment.

In Phase 2 of the NPRM, the Commission seeks to streamline and reform its existing accounting and ARMIS requirements for ILECs in the short term by reducing

¹ Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 1, CC Docket No. 99-253, *Report and Order*, 15 Rcd 8690 (2000) (*Phase 1 Report and Order*).

certain accounting and ARMIS reports.² In Phase 3 of this NPRM, the Commission seeks to determine the appropriate levels of streamlining regulation in the long term. Initial comments were filed February 13, 2001. ALTS files these reply comments on Phase 3 issues of long-term deregulation.

SUMMARY

The Commission states in its NPRM that it seeks to undertake a broader examination of Part 32 rules and ARMIS requirements and determine what, if any, specific reporting and accounting requirements will be necessary once the local exchange market becomes sufficiently competitive.³ ALTS agrees that once the market is fully competitive that certain accounting and reporting requirements will no longer be necessary.⁴ However, ALTS agrees with the commenters in this proceeding that it is premature for the Commission to look to future deregulatory practices when the ILECs remain the dominant carriers in the local market.⁵ Instead, the Commission should focus on the necessary steps that will lead to a fully competitive market.

ALTS recommends that the Commission follow a simple formula: regulate those carriers that maintain dominance in the local market in the region in which they operate

² 2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2 and Phase 3, CC Docket No. 00-199, *Notice of Proposed Rulemaking*, FCC 00-364 (rel. Oct. 18, 2000) (*NPRM*), at ¶ 3.

³ *NPRM* @ ¶ 87.

⁴ ALTS disagrees, however, with the Commission's standard of "sufficiently" competitive and urges the commission to adopt the Department of Justice (DOJ) standard of review for Section 271 applications which provides that the market must be irreversibly open to competition. The DOJ standard ensures that competitive local exchange carriers (CLECs) will have a foothold in the market that will, in turn, lessen the need for regulation.

⁵ See Comment filed by Sprint in CC Docket 00-199, Phase 3, February 13, 2001, at p. 2 (*Sprint Comments*); See also Comments filed by the Public Service Commission of Wisconsin in CC Docket No. 00-199, Phase 3, February 13, 2001, at p. 3 (*WI Comments*); See also Comments filed by NARUC in CC Docket No. 00-199, Phase 3, February 13, 2001, at p. 3 (*NARUC Comments*); ; See also Comments filed by Worldcom in CC Docket No. 00-199, Phase 3, February 13, 2001, at p. 3 (*Worldcom Comments*); See also Comments filed by AT&T in CC Docket No. 00-199, Phase 3, February 13, 2001, at p. 2 (*AT&T Comments*).

and deregulate those carriers that have proven that they have irreversibly opened their markets to competition.

ALTS maintains, however, that it is too early for the Commission today to come up with a set formula for deregulation some time in the future. Focusing on a “final” deregulatory framework is resource intensive and time-consuming given that the industry is far from being effectively competitive. An ILEC could gain Section 271 authority and continue to have a poor wholesale performance record.⁶ A merged company could continue to disregard merger conditions, or misinterpret the Commission rules. New technologies could develop that impact whether a carrier maintains monopoly control over the piece-parts of the new technology.⁷

Thus there are many variables affecting the over-all outcome of a competitive industry and often the final rules cannot be determined ahead of time, especially in the fast-paced world of telecommunications. Thus the Commission should be focused on ensuring that the market is fully open to competition first rather than putting the final deregulatory framework in place for some unknown time in the future.

I. When Should the Commission Eliminate Accounting and Reporting Requirements?

The Commission sought comment on whether there are certain triggers that will allow the Commission to significantly modify or relieve certain accounting and reporting requirements.⁸ Specifically, the Commission asked whether individual requirements

⁶ The Commission released a report in August 2000 that showed that wholesale service quality had declined in New York subsequent to Verizon’s (formerly Bell Atlantic) receiving section 271 approval (*FCC August 2000 Report*).

⁷ Advanced Services is good example of a non-regulated service where the pieces needed to provide the service (e.g., loops) are regulated. Thus regulation is necessary for ILECs providing the nonregulated service even though the service itself is not a regulated activity.

⁸ *NPRM* @ ¶ 89.

should be lifted once individual carriers become non-dominant? Whether there is a point when the Commission can eliminate its requirements altogether? How the Commission makes a finding of non-dominance? How a carrier should be regulated when some services are deemed competitive, while others are not? Whether the Commission should deregulate the industry as a whole once some carriers are deemed non-dominant? The effect of carriers receiving Section 271 relief?⁹

ALTS recommends that the Commission regulate those carriers that maintain dominance in the local market in the region in which they operate and deregulate those carriers that have proven that they have irreversibly opened their markets to competition. Accounting and Reporting requirements should not be eliminated until the ILEC operating in that particular region becomes non-dominant and there is full, effective competition within that service territory.

Non-dominance is an issue that the Commission and the Department of Justice have failed to take on with respect to the local market. A market share test was rejected by Congress in drafting the 1996 Act, and the DOJ has stated only that the market must be irreversibly open to competition. The Commission has already put forth certain standards in its Section 271 orders that outline what a carrier must do to prove compliance with the competitive checklist to presumably prove that the market is open.

⁹ The Commission seeks comment on many issues that the Commission itself is struggling with today most notably in Section 271 applications. Much of the criteria the Commission uses in making a determination of RBOC section 271 compliance (e.g., whether the carrier has sufficiently proven that it has opened the market) can be used in this proceeding as well in determining whether the carriers are no longer dominant. In New York, Texas, Oklahoma, and Kansas, Verizon and SBC are no longer subject to market-opening scrutiny in their respective states. Yet, they continue to be regulated via reporting and accounting requirements because they continue to be wholesale providers to CLECs. Further, Verizon and SBC are required to comply with merger conditions, service quality reports, and post-271 entry performance measures.

But even then the Commission itself has found that subsequent section 271 authority does not mean that the market is open.¹⁰

By seeking a roadmap to lift regulations the Commission is asking for a list that, with all due respect, already exists. There are several pending Commission orders that clearly define the “roadmap” to long term transition to deregulation. The problem is that the ILECs continue to disregard Commission orders. Thus the Commission should not seek long term plans to deregulate ILECs unless certain criteria are in place. Namely, the Commission must ensure that it has instilled strong anti-back sliding measures with swift and effective enforcement mechanisms that impose result-oriented penalties.

In addition, the Commission must gather real evidence that CLECs can convert end-user customers in a timely and economical manner at volumes that mirror what the ILECs have been able to accomplish in converting long distance customers in those states where the Commission has granted section 271 authority.¹¹ With these minimum safeguards and measures in place, the Commission should relax regulation only to the extent that the ILECs have proven that a commensurate level of competition exists in its region for the particular service.

II. The Local Market Is Not Irreversibly Open to Competition

USTA claims that competition is increasing at “lightening speed”, that convergence in the communications marketplace will render rules for ILECs obsolete, and that the ILECs, not the regulators, should specify the triggers that would relieve the

¹⁰ See FCC August 2000 Report.

¹¹ Verizon (formerly bell Atlantic-NY) boasts converting over 500,000 long distance customers in New York within one month of receiving in-region interLATA authority.

ILECs from current accounting and reporting rules.¹² These are typical ILEC arguments that contain some truth, but are far from the reality.

Competition is developing, but certainly not at lightening speed. It is true that the Internet has opened up endless possibilities for end users, however ILECs continue to thwart any real CLEC attempt to grow in that area. ILECs continue to refuse to pay reciprocal compensation and refuse to make available in a timely and efficient manner the unbundled network elements necessary to offer advanced services. With respect to the ILEC being the over-seer of deregulatory triggers, it is backwards to allow the fox to watch over the hen house. The regulators must be the arbiter of any “triggers” that would allow for removing or decreasing current regulatory constraints.

According to ALTS’ Annual Report filed February 20, 2001, the future of competition is still vulnerable with the ILECs serving between ninety-three and ninety-five percent of the local telephone market.¹³ It is misleading to state that competition is increasing at “lightening speed” when only three CLECs are generating more revenues than expenses – especially when there are over three hundred competitive companies in the local exchange market.

The Commission must ensure that there is a viable market for competitors before it seeks to put Humpty Dumpty back together again by pre-maturely removing the accounting and reporting requirements. These requirements are the only true tools the regulators have to gauge the competitive market and enforce rules and regulations where

¹² See Comments filed by USTA in CC Docket No. 00-199, Phase 3, February 13, 2001, at p. 6-9 (*USTA Comments*).

¹³ See ALTS Annual Report, filed February 20, 2001, available at www.alts.org (*ALTS Annual Report*).

the ILECs are not in compliance with the Act.¹⁴ Prematurely setting standards in anticipation of a fully competitive market is akin to predicting the future – a risk with very little value to the over-all goal set forth in the *NPRM*.

III. Where An ILEC Competes Outside Its Service Territory

The Commission notes in its *NPRM* that a number of incumbents, both large and small, have begun to compete as CLECs outside their traditional service areas.¹⁵ The Commission seeks comment on its accounting and reporting requirements where carriers no longer remain in their historical line of business. Yet the associated footnote merely references *commitments* by SBC and Ameritech, and Bell Atlantic and GTE, to compete out-of-region.

Thus the Commission offers no real evidence of ILECs competing against other ILECs in other regions. Moreover, where any ILECs operates as a real competitor in other territories, those ILECs may not be subject to the same regulations. Rather than focus on commitments not yet fulfilled, ALTS urges the Commission, instead, to focus on the issues preventing competition.

One way, however, for the Commission to resolve the issue of out-of-region competition, or competition over-all, would be to structurally separate the ILECs into wholesale and retail companies. The wholesale company would continue to be regulated and subject to quality of service to, and nondiscriminatory treatment of, the CLECs. The retail arm would be subject to reporting and accounting requirements only to the extent

¹⁴ See ALTS Annual Report, Commentary by James K. Glassman: In 2001, Verizon (a combination of Bell Atlantic, NYNEX and GTE) will have \$65 billion in revenues – up from \$13 billion in 1996. SBC Communications (a combination of Southwestern Bell, PacTel, and Ameritech) has a market capitalization of more than \$160 billion – or twice that of AT&T.

¹⁵ *NPRM* @ ¶ 93.

necessary to ensure that the retail arm is truly a separate and distinct entity competing with CLECs for end-user customers.

IV. CLECs Should Not Be Subject to Reporting and Auditing Requirements

The Commission sought comment on whether CLECs should be subject to accounting and reporting requirements.¹⁶ It is illogical to impose any requirements on a competitive entity – especially in the long term if the goal is to move to a deregulatory environment. Regulatory asymmetry exists between ILECs and CLECs in the market today because the market itself is asymmetrical. However, once competition develops, regulations will be lifted to the extent of proven competition. If, by some odd alignment of the stars in the universe, CLECs become the local monopolists, then the regulators will have to rebalance the regulatory scheme and impose accounting and reporting requirements on the CLECs. Otherwise, the Commission should impose no regulation on the CLECs now or in the future.

CONCLUSION

The Commission has correctly recognized that once the market becomes competitive certain regulatory requirements for the dominant carriers will not longer be necessary. However, ALTS urges the Commission to focus on the tasks at hand rather than seek guidelines for a future world of telecommunications when the present day problems are far from being resolved.

Although CLECs have made great strides since 1996, the ILECs maintain a commanding lead in the telecommunications industry controlling over ninety-five percent of the local market. Rather than focus on deregulation, the Commission, instead, must

¹⁶ NPRM @ ¶92.

devote precious resources to ensuring that the roadmap the Commission has already laid out is being adhered to. Once the current rules are firmly being implemented, then the Commission can take the next step towards implementing a long term deregulatory plan. Until then ALTS urges the Commission to continue to require the ILECs to comply with the reporting and accounting requirements.

Respectfully Submitted,

/s/

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